
2005

COMMITTEE ON GENERAL AFFAIRS

NEBRASKA LEGISLATURE

LR 114
Interim Study Report

Study on Cemeteries and Cemetery Law

NINETY-NINTH LEGISLATURE
FIRST SESSION

GENERAL AFFAIRS COMMITTEE MEMBERS

Senator Ray Janssen, Chairperson
Senator Deb Fischer, Vice-Chairperson
Senator Matt Connealy
Senator Abbie Cornett
Senator Phil Erdman
Senator Mike Friend
Senator Dave Landis
Senator Roger Wehrbein

ENCLOSURES

- I. Legislative Resolution 114**
- II. Memorandum, Chairman Ray Janssen**
- III. Chart of Nebraska cemetery statutes, case law, and interim hearing outline**
- IV. Handout, League of Nebraska Municipalities**
- V. Friday, October 28, 2005, Hearing Transcript, General Affairs Committee**

NINETY-NINTH LEGISLATURE
FIRST SESSION
LEGISLATIVE RESOLUTION 114

Introduced by McDonald, 41

Read first time May 11, 2005

Committee:

PURPOSE: The purpose of this study is to examine matters and issues related to cemeteries and cemetery law, including, but not limited to, obsolete statutory language, statutory definitions of perpetual care and perpetual care funds, local zoning ordinance notification requirements for individual plot owners, and the effects of urban and rural residential growth.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE
NINETY-NINTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the General Affairs Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.

2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

Nebraska State Legislature

SENATOR RAY JANSSEN

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MEMORANDUM

TO: GENERAL AFFAIRS COMMITTEE MEMBERS
FROM: SENATOR RAY JANSSEN
DATE: DECEMBER, 2005
SUBJECT: LR 114 PUBLIC HEARING

The public hearing on LR 114 was held on Friday, October 28, 2005, before the General Affairs Committee. The resolution was introduced to examine issues relevant to our state's cemeteries and the laws by which they must abide.

Sen. McDonald's Legislative Aide, Mikki McCann, introduced the resolution, stating that it is difficult for the public and local government to determine their rights and obligations regarding cemeteries. The cemetery statutes are scattered throughout the code, and there is no central, overseeing entity for cemeteries, making uniform and consistent application of the law very difficult. Further, the cemetery statutes are permissive and not required, which Sen. McDonald believes is a problem. Ms. McCann pointed out that most of our cemetery statutes were implemented near the turn of the century and do not address today's issues. Some of the other major issues include counties' obligations to abandoned or pioneer cemeteries and perpetual funds definitions and requirements. She suggests that perhaps we should put all of the cemetery statutes in one place in state law.

Robert Parry of Postville Wells Church & Cemetery testified about how hard it is to keep the pioneer cemeteries going and pointed out certain areas of the law he thinks should be addressed. He believes that §12-801 is not clear regarding who is to represent a cemetery's interests when a county takes it over, and suggests that perhaps the State Historical Society should become a cemetery trustee. Other points in his testimony include the following. §12-805 allows not more than \$500 to be spent on maintenance of an abandoned cemetery, but that is not enough to properly take care of a cemetery. Partial

abandonment is not in reality acknowledged because it is not defined. §12-807 requires a county to care for an abandoned and neglected pioneer cemetery if 35 adult residents of the county petition so. Mr. Parry believes the 35 signatures should be local, only those with an interest in the cemetery, and legal notice should be required to be given when starting a petition. §12-808 defines an abandoned and neglected pioneer cemetery as one which has been abandoned and neglected for 20 years. He believes 20 years is too long, and suggests the time limit should be two consecutive years. Mr. Parry also mentioned §12-808.01, saying that good roads need to be provided for cemetery access; §12-809, saying that he doesn't like the permissive language, and that it should require annual spraying; and §12-810, saying that directional markers are not necessary, as he believes they will lead to vandalism.

Mr. Parry emphasized that money is a big problem. Liability insurance is costly, and he doesn't think they should have to pay sales tax because their cemetery organization is non-profit, but the tax benefits are not available because it isn't a religious organization.

Norman Smith, with the Rose Hill Cemetery in Albion, testified on many of the same issues. Rose Hill is the cemetery that has recently had problems trying to keep a cellular tower out of the cemetery. He indicated that the cemetery board did not follow financial cemetery statutes because they were no longer applicable, and we need new legislation to endorse the guidelines that they now follow. Cemetery association laws have to have weight. He believes that cemetery associations should be made into viable entities; certified or receive some sort of accreditation. Right now they have no way to block growth onto their cemetery. Mr. Smith also mentioned taxes on donations as being a problem.

Nancy Beach, President of the York County Historical Commission, has been involved in a messy legal problem encountered while indexing the York County cemeteries. Her organization wanted to have the county maintain a cemetery (established in 1882) that was partially abandoned and had not been maintained for a long time. An eagle scout wants to clean up the cemetery for a project, which will start a 20 year clock going based on a law that requires a cemetery to be untouched for 20 years before it can be declared abandoned. The process of turning the land over to the county for maintenance has been stalled because of questions regarding ownership and the statutes on abandonment.

Ms. Beach believes that "cemetery" should be better defined in statute, and that "abandoned cemetery" should be defined as one that has been abandoned *or* neglected instead of abandoned *and* neglected. She further stated that we need to answer whether ownership changes when a county takes it over, and that we need to address how transfers of property work and whether people

can randomly create associations because associations are not required to be registered. §12-801, regarding lots, needs attention in that a process to preserve stones outside of the family's specific permission is needed. §12-808 defines pioneer cemeteries as, among other criteria, those which were founded before January 1, 1900. Ms. Beach believes this date is unduly restrictive. She also believes that liability and cemetery districts need to be better addressed in statute.

Finally, Ms. Beach talked about §12-1401, regarding the cemetery registry, stating that cemetery names could become a problem, since some cemeteries have the same names and over time some cemeteries change names. She expressed concern that perhaps some of the published information in the registry should remain private. The Historical Society has indicated the same concern.

Larry Dix, Executive Director, Nebraska Association of County Officials, spoke to the lack of authority assigned with cemeteries. He said that associations come and go and counties often end up taking over the cemeteries. This gets very expensive for counties because maintenance goes on indefinitely. They also have to work around county lid limitations. He believes that counties should be looked at as the last resort for maintenance. It is also a problem that the county has no property rights to these cemeteries, so they are unable to protect the land that they maintain. There is no legal authority in the statutes for this.

Mr. Dix further stated that we should ask whose priority it should be to take care of the cemeteries – who is to protect the heritage. He believes there should be clear and concise codified responsibility so there can be proper dispute resolution.

Gary Krumland with the League of Nebraska Municipalities said that the municipal statutes on cemeteries are scattered, and it is hard to make laws of different sized/classified counties match. He spoke to the cemetery board problem and stated they need more flexibility in that area. Mr. Krumland distributed a handout showing some of their current cemetery statute concerns. That handout is attached to this report.

Greg Easley, former president of the Nebraska Cemetery Association, testified that cemeteries have a right of eminent domain and condemnation. He said we need to do something about the liability put on small cemeteries. He is concerned about people who start their own cemeteries and the perpetual care fund statutes, which require only 25 cents per square foot for the fund. He thinks 10% of the lot cost should be put into a perpetual care fund for the future. He said we need a better definition of abandoned cemeteries, because they could be defined just as those which are not being maintained.

At a meeting held shortly before the resolution hearing, Mr. Easley discussed the cemetery statutes in greater detail, and pointed out some statutes he believes should be left alone because they are working -- the statutes on unmarked human burials, cremation, and the pre-need burial act.

Mr. Easley further stated that the perpetual care fund provisions should be changed as there is a need for some method of recourse when land is being taken over by a county, and suggested that this issue could be addressed with the Attorney General. Last, he stated that if there is no sale, transfer or burial in a cemetery for 40 or 50 years, then it should be considered abandoned, leaving the maintenance provision out of the definition, and that overall, we should keep cemeteries from becoming obligations of the state, counties and cities.

It is obvious that there are a number of issues that need to be addressed in our cemetery law. My recommendation at this time is to pursue a comprehensive redraft of the cemetery statutes through a revision committee or task force. This group of interested parties could work during the year on suggested legislation to be introduced during the 2007 session. More information regarding this project will be given during session.

Cemeteries

Nebraska Statutes

- Wyuka Cemetery (§§12-101 to 12-105)
- Condemnation Proceedings (§§12-201 to 12-205)
- Endowment of Cemeteries (§§12-301, 12-302)
- Cemetery Lots, Abandonment, and Reversion (§§12-701 to 12-702)
- Maintenance and Improvement of Cemeteries (§§12-801 to 12-811)
 - Care and Maintenance of Abandoned and Neglected Cemeteries (§§12-805 to 12-807)
 - Pioneer Cemeteries (§§12-808 to 12-810)
- Municipal Cemeteries (§§12-1001 to 12-1004)
- Burial Pre-Need Sales (§§12-1101 to 12-1121)
- Unmarked Human Burial Sites (§§12-1201 to 12-1212)
- State Veteran Cemetery System (§§12-1301)
- Municipalities' Cemetery Statutes
 - Villages (§§17-926, 17-933 to 17-947)
 - 1st Class Cities (§§16-241 to 16-245)
 - 2nd Class Cities (§§17-926, 17-933 to 17-947)
 - Primary Class Cities (§§15-239 to 15-243)
 - Metropolitan Class Cities (§§14-102 and 14-103)
 - Cities of less than 25,000 population and villages (§§12-401 to 12-403)
- Cities, Counties, and Other Political Subdivisions - Terms (Chapter 13)
- Other cemetery ownership statutes
 - Cemetery Associations (§§12-501 to 12-529)
 - Mausoleum Associations (§§12-601 to 12-618)
 - Cemetery Districts (§§12-901 to 12-923)
- Other provisions regarding cities, taxation, property rights, funerals, and veterans' graves (Chapters, 19, 23, 25, 28, 39, 71, 72, 76, 77, 80, 82, 83, 84, and the Nebraska Constitution)

Cases

Anderson v. Carlson, 171 Neb. 741, 107 N.W.2d 535 (1961)
Bigelow v. Bigelow, 131 Neb. 201, 267 N.W. 409 (1936)
First Nat. Bank of Pawnee City v. Hazels, 63 Neb. 844, 89 N.W. 378 (1902)
First Nat. Bank of Omaha v. United States, 532 F.Supp. 251 (D. Neb. 1981)
Greenwood Cemetery v. City of Wayne, 110 Neb. 300, 193 N.W. 734 (1923)
Hueftle v. Eustis Cemetery Assn., 171 Neb. 293, 106 N.W.2d 400 (1960)
In re Estate of Rudge, 114 Neb. 335, 207 N.W. 520 (1926)
Omaha Nat. Bank v. West Lawn Mausoleum Assn., 158 Neb. 412, 63 N.W.2d 504 (1954)
Pokrok Zapadu Publishing Co., v. Zizkovsky, 42 Neb. 64, 60 N.W. 358 (1894)
Root v. Morning View Cemetery Assn., 174 Neb. 438, 118 N.W.2d 633 (1962)
Speidell Monuments v. Wyuka Cemetery, 242 Neb. 134, 493 N.W.2d 366 (1992)
State ex rel. Craig v. Offutt, 121 Neb. 76, 236 N.W. 174 (1931)

State ex rel. Wyuka Cemetery Assn., v. Bartling, 23 Neb 421, 36 N.W. 811 (1888)
Tetschner v. Cram, 157 Neb. 734, 61 N.W.2d 378 (1953)
Townsend v. Beatrice Cemetery Assn., 188 F. 1 (8th Cir. 1911)
Youngers v. Exeter Cemetery Assn., 85 Neb. 314, 123 N.W. 95 (1909)

LR 114 Study Plan

- Examine issues related to cemeteries and cemetery law
 - Review all Nebraska statutes and case law relating to cemeteries
 - Review terminology used in statutes
 - Identify obsolete statutory language
 - Identify conflicting and confusing provisions
 - Recent statutory changes (LBs 119, 211, 227, 262, 355)
- Examine Issues relating to Counties and Municipalities
 - Government of cemeteries - Cemetery associations, boards
 - Perpetual care and perpetual care funds
 - Local zoning ordinance notification requirements for individual plot owners
 - Effects of urban and rural residential growth on cemeteries
 - Pioneer cemeteries
 - Abandoned cemeteries
 - Duties of counties and municipalities
 - Financial considerations
 - Need for regulatory authority
 - Additional use of the registry program
- Special Consideration for Regional Center cemeteries/other state facilities
- Other states' statutes and cemetery regulation
- Identify other resources for information
- Suggestions for statutory revision
- Public Hearing on October 28, 2005, Columbus, Nebraska
 - NACO would like to see abandoned and pioneer cemetery law reviewed, including issues of ownership.
 - The League would like to see the issue of abandoned lot ownership reviewed, as well as the problems of small town cemetery boards.

CEMETERY LEGISLATION

LEAGUE OF NEBRASKA MUNICIPALITIES

LB 262 [2005] (Introduced by Sen. Stuhr) – The bill modifies and expands the use of cemetery perpetual fund for municipal cemeteries. LB 262 changes provisions related to cemeteries in cities of the first and second classes and villages to allow a limited portion of the principal in certain perpetual funds to be used for the purchase and development of additional land for cemetery purposes. No more than 25% of the principal could be used in any fiscal year, and no more than 35% could be used in any ten consecutive fiscal years. It was passed by the Legislature on a 47-0 vote and signed by the Governor. The effective date was September 4, 2005.

LB 355 [2005] (Introduced by Senators Janssen and Connealy) – The bill establishes a procedure for the transfer of cemeteries from a cemetery association to municipality. Prior law provided a procedure to transfer ownership of a cemetery from a city or village to a cemetery association, but not for the reverse situation. LB 355 is designed to fill this gap by enacting procedures similar to those that apply for the transfer to an association. It was passed by the Legislature on a 44-0 vote and signed by the Governor. The effective date was September 4, 2005.

OTHER ISSUES OF CONCERN – LR 114:

§12-401 requires the municipal cemetery board to have six members. In some smaller municipalities, it is difficult to get six people to serve and if they agree to serve, to attend meetings. It would be helpful to give municipalities flexibility by modifying the “six members” to a lesser number such as “at least three.”

Along with this, §12-401 provides that the cemetery board shall have the “entire control and management of any cemetery belonging to the city or village.” This often requires monthly meetings to approve claims and salaries. In some smaller municipalities, it is difficult to get a quorum for a short meeting. It would be helpful to modify the statute to allow the handling of these routine matters without a cemetery board meeting so that the board does not have to meet so frequently.

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COMMITTEE ON GENERAL AFFAIRS
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The Committee on General Affairs met at 1:30 p.m. on Friday, October 28, 2005, at the New World Inn, Columbus, Nebraska, for the purpose of conducting a public hearing on LR 114. Senators present: Senator Janssen, Chairperson; Senator Cornett; Senator Connealy. Senator absent: Senator Fischer, Vice Chairperson; Senator Erdman; Senator Friend; Senator Landis; Senator Wehrbein. Also attending: Senator Stuthman.

SENATOR JANSSEN: Good afternoon, ladies and gentlemen. Welcome to the General Affairs interim hearing study. Today's Bill (sic) on the agenda is Legislative Resolution 114. And we will have Senator McDonald's able-bodied aide to introduce that Resolution for us today. I would like to introduce those who are here with us this afternoon. On my far right is Senator Arnie Stuthman, and this is Arnie's Legislative District, so we're glad to be here, Senator Stuthman.

SENATOR STUTHMAN: Thank you.

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SENATOR JANSSEN: And to my immediate right is Laurie Lage, who is legal counsel for the General Affairs Committee; and to my far left is Brittany Sill. She is the committee clerk. And we're very happy to have Senator Cornett with us here this afternoon. She drove all the way out here from Omaha, and it's just a small hearing, but I'm very happy to have you here, Abbie. Senator Connealy is just arrived. Hi, Senator, how are you? You just got in on the introductions, Senator Connealy. Senator Connealy is from Decatur, Nebraska. He's been a member of this Committee for quite some time now. Now I think that probably most of you...and for the record, my name is Ray Janssen, I Chair this Committee, from Nickerson, Nebraska. For those of you who are not familiar with the hearing process for testifiers, would you please fill out the little testifiers sheets that are in that box on the testifiers table and just leave them turned over right there along side of that box so we know for the record who was here. And please spell your last name when you come to the witness table, spell your last name for the record and state who, if anyone, you're representing. You may testify as a proponent or an opponent or in a neutral capacity whichever fits your testimony. And

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limit your testimony and try not to be repetitive in talking about something that someone has talked about prior to your being up. And we would appreciate it if you would shut off your phones, your cell phones, and your pagers and put them on "buzz" or whistle or something like that so that it doesn't interfere with the recorded conversation we're having. And refrain from any conversations among yourselves in the audience and because that does interfere with the hearings. So we've got everyone introduced here and I would like to have Mikki come up, and she is representing her senator this afternoon in her capacity.

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MIKKI McCANN: And unfortunately I need to have glasses, so I'll get those out. Senator Janssen and Members of the General Affairs Committee, I thank you and appreciate the fact that you're letting me come and appear before you on behalf of Senator McDonald today. She is in Chicago with her private sector job. We're never sure how to say that, you know, the real job or whatever, but unfortunately, she

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had to attend a training seminar and couldn't be with you today. My name is Mikki McCann, M-i-k-k-i, the last name is McCann, M-c-C-a-n-n. I'm Senator McDonald's legislative aide, and she asked me to introduce LR 114 for her because she isn't able to be here. LR 114 asks your Committee to examine matters and issues related to cemeteries and cemetery law. Current laws governing the management and use of cemeteries are scattered all over the statutes. Laurie knows this well after this year. Many of the current statutes were passed at the beginning of the previous century and haven't been updated over the intervening years. When most of these statutes were written and implemented Nebraska didn't have local zoning. Cemeteries on the edges of cities and towns that are growing have specific issues related specifically to growth. Many cemeteries in the state's larger cities are completely landlocked now. As an example I like to use, Lincoln Memorial Park in Lincoln. Fifteen years ago Lincoln Memorial Park was several miles south of Highway 2, and it was basically in the country in land that was zoned ag land. Now it's still several miles south of Highway 2, but it's now surrounded by developed property including two new schools, a library, a YMCA,

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high-end residential property, malls and apartment complexes, and it's less than a mile from the SouthPointe Shopping Center in the fastest growing part of Lincoln. That can cause or is causing problems for cemeteries all across the state that find themselves in that same position. Cemeteries own land that is not yet needed for burials. As time passes and cemeteries do what they do, there will eventually be burials in previously unused sections of those properties. How long will it be for a disgruntled homeowner to decide that he doesn't like looking at a fresh grave from his living room window and that a cemetery might not be an appropriate neighbor or an appropriate use for land? The reason we bring that up is because in other states that are very populated, particularly in Maryland and Massachusetts, lawsuits based on set-back requirements in local zoning ordinances have already been used against landlocked cemeteries by disgruntled residential neighbors. So we may not have it yet, but I think to assume that we're not going to have it is naive, and we need to be thinking about what's going to happen if we have those kinds of problems. One of the other problems that we're having, is it a zoning issue or is it a land use issue or, hard to say but cell phone

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tower proliferation is a problem. Some cemeteries welcome cell phone towers, some cemeteries see cell phone towers as a way to raise revenue for their cemetery. And often in many cases the cemetery is at the highest point in the county, so if you put a cell phone tower in the cemetery, you get money for doing that and it helps the bottom line of the cemetery. Other cemeteries fight cell phone towers on the firm belief that the cell phone tower detracts from the perpetual care and the quality of that perpetual care that they've promised everybody who buys lots from them that they would provide to those who come and use the cemetery. At the county level, county boards are faced with abandoned and pioneer cemetery issues on an increasing basis. The deadlines, definitions and delineation of responsibility in the statutes dealing with abandoned cemeteries, how to get a cemetery declared abandoned, and pioneer cemeteries are subject to different legal interpretations which can cause problems both for the private citizens who are trying to protect an abandoned cemetery and get the county to take it over and maintain it at a very minimal level, and for the county boards who are just trying to figure out what their legal responsibilities are. It's difficult for the private

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citizens to figure out what they need to do in order to have a cemetery declared abandoned by a county board. We say, Petition the county board, but we don't tell them how. We don't tell them what has to be in the petition. We don't tell them what other things they need to do, where they can go for the information that they need. In addition, there is a question about the statutory time line of 20 years of abandonment and neglect, that that may be longer than what we really need to determine whether anybody's going to ever be taking care of this cemetery or buried there or anything along those lines. NACO has several representatives here. I know one of the NACO people is going to speak directly to the problems that counties are having right now with adjoining landowners. This is an area where statutory language really needs to be beefed up and make it absolutely clear that adjoining landowners have no right to appropriate cemetery land for their own use regardless of cemetery's status. A cemetery is a cemetery. It's sanctified ground. You can't irrigate over it and plant your crops over it just because nobody's been buried there recently. But there's no enforcement mechanism in the law so counties need to have some assistance there so that they protect abandoned and

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pioneer cemeteries from adjoining landowners who are more thinking about their own bottom line and less thinking about the fact that people's ancestors are buried there and we owe them a certain amount of respect. I also want to know, as long as I'm talking about the Sections about counties, is that the statutes are permissive in these Sections. They don't require the counties to take these abandoned cemeteries over if the criteria are met. They just say a county may take these cemeteries over and declare them abandoned and take over the maintenance thereof. But it's not a requirement for them to do that, and I think we need to clarify whether if all the criteria are met, the counties are going to take it over. Now there are some issues there with that, but I don't want to get into the testimony of the county people too much here, but there are some issues with those particular Sections that are causing problems at the county level both for county board members who are trying to do the right thing and private citizens who are trying to preserve cemeteries that are no longer actively used to bury people. We also have issues with the definition of "perpetual care" and "perpetual care trust fund." This is not an area that I have worked a lot on, but I'm hoping there is

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someone from the Cemetery Association here today to talk about the fact that there is a need to require a specific percentage of the cost of lot sales to be put into the perpetual fund to pay for the ongoing care and maintenance of the cemetery. And as I understand it from what I've been told, some cemeteries already do that. They put a lot in there because they know that their cemetery is going to be around a long time. And some are in such a financial situation that if they sell a lot, they need almost every bit of money that they get just to meet the current bills, but nothing is being set aside for the future. And unfortunately, that's one of the ways that cemeteries end up abandoned because they don't have any money for care, and so you can't bury anybody because you can't take care of it. So it's a problem on several different levels. And there was supposed to be someone here from the Cemetery Association, I hope that there is, to talk to you about that because that's not an area that I'm very familiar with and I can't answer those questions for you. The one area about perpetual care and perpetual care trust funds that is a problem is that depending on the type of cemetery that you are, we have a different definition for "perpetual care" and

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"perpetual care trust funds" depending on what type of cemetery that you are. These definitions, whether you are a municipal cemetery or religious cemetery or let's say, a fraternal cemetery, or any of the many different cemeteries, it would be a lot easier for the cemeteries and for the public if these definitions were uniform and consistent, and currently they're not. Current statutes don't provide any one agency to oversee cemeteries. There are no suggested rules and regulations. There's no central reference point at the state or local level to go to with questions about whether a cemetery is in compliance with the law. Senator McDonald is not suggesting that we create a state agency to oversee cemeteries. She's just suggesting that all the cemetery statutes should be uniform and consistent, and probably they should all be grouped together in the same place like we did 10, 15 years ago with the rules of the road which used to be scattered all over the statutes. Now they're all in Chapter 60 and we can find them and you can go look them up and figure out what is what and it's all there together. But that's just not the way these are. Some are over here in the statutes dealing with cities, and there's some in the statutes over here dealing with

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counties, and then there are a few more over here in the statutes dealing with state hospitals and correctional facilities, and then now because we have had a couple of bills dealing with this, there's some over here in the State Historical Society statutes. So it's very hard for Mr. Public Citizen to go out and take a look at the statutes and figure out what they're supposed to do and what they're supposed to do to comply. Now there are a lot of experience people in the cemetery business at the city level and in the private cemeteries around the state. And they're always willing to help, but sometimes people just want to be able to go and do it and get it for themselves, and right now it's very, very difficult for somebody that's not a little bit more experienced at dealing with state statutes to be able to put it all together in a clump. When we started working on this, Laurie put together a...this is the stuff dealing with the state statutes dealing with cemeteries that Laurie put together. Now some of it includes the annotations for the court cases, but they're all over the place. And it probably took you a long time to do that too. Although we recently passed legislation, Senator Janssen had a bill this year that provides for a statewide cemetery

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registry, one of the concerns that has been expressed by a private citizen is that it will help them find the cemeteries, but it doesn't provide any protection for the cemeteries. And Senator Janssen and I were discussing this a little bit earlier, and that's one of the things he's really concerned about is providing that protection, but we're having a hard time finding the right way to do that. We're losing these cemeteries almost on a daily basis in Nebraska due to vandalism, abuse by adjoining landowners or through simple neglect. The cemeteries can be out in the middle of the field somewhere and not even visible from the road, but there's still a cemetery with 30 or 40 graves in them, and eventually we're going to lose track of where they are. But now we won't because we'll have the cemetery registry, but we still can't protect them very well. I didn't intend this to be quite so long, so please excuse me for that. The issues that are in this introduction are issues that have been brought to Senator McDonald over the last year and a half since April of 2004 when she started getting involved with this because of a situation at a cemetery in her District. So I'm sure there's a lot of other cemetery issues that we don't know anything about, but

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those are the ones that we've been dealing with and that's the purpose for the interim study to talk about the ones that we know about, and hopefully, other people will come forward too. So if I can answer questions for you, I will or I will refer you to the experts because I know there are a couple back here.

SENATOR JANSSEN: Any questions? It don't look like it, Mikki.

MIKKI McCANN: Oh, good, I got off lucky.

SENATOR JANSSEN: You got off lucky.

MIKKI McCANN: Thank you.

SENATOR JANSSEN: I had a whole list here, but I'll...

MIKKI McCANN: You're going to let me go? I can sit back down.

SENATOR JANSSEN: I'll leave them go. Okay, we take the

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proponents, those wishing to testify in support of this resolution. How many proponents are there? One, two. Okay, you can testify in any capacity you want to at this hearing. Legal counsel said so, and I believe her. (Laughter) All right, come right on up. Somebody's got to be first. There you go.

ROBERT PARRY: My name is Robert Parry, and that's P-a-r-r-y. And I really represent the Postville Welsh Church and Cemetery. It's a...

SENATOR JANSSEN: Which one was that?

ROBERT PARRY: Postville? Postville Welsh Church and Cemetery.

SENATOR JANSSEN: Okay.

ROBERT PARRY: It's a pioneer cemetery in Platte County.

SENATOR JANSSEN: Okay.

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ROBERT PARRY: And I'm one of those that oversees the upkeep of them. And I've been working on the Statutes and trying to make things go, and I can see the first 100 years at pioneer cemeteries was easy going, but the second 100 and there is going to be tough. Believe me, I've been at this, trying to keep the cemetery going, and it's just not my cemetery, it's...I see them being abandoned, you know. And I look at Article 8 of the cemeteries, and if I could, I'd like to hit upon a few items that I think need to be looked at. In the first part in 801 (LB 270, Section 12-801) and so on and so forth, you talk about trustees, and once a county takes over a cemetery, who represents the cemetery? They're the caretakers but the land was deeded to a cemetery association or to a church, and it's there forever. Then the county takes over it just, they take care of the maintenance, but who looks out for the cemetery? And I would suggest that maybe the State Historical Society becomes the trustee. Somebody has to look after the cemetery, make sure it's maintained because there's a lot of things that can happen. In 805 (LB 270, Section 12-805) you say that there's \$500 a county can spend. That's not near enough for a county to take care of a cemetery. My

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experience is that a cemetery it says in the statutes that now it two weeks before Memorial Day and that's about what it gets. And \$500 does not go very far. For a county to take care of a cemetery as it's stated in a little later in another one where it says to maintain it is the normal procedures. The trees, the mowing, taking care of the tombstones, they can't do this on \$500. And I'd be real reluctant if they ever would, not on \$500. And then also in that paragraph it says something about a partial abandonment. Now I've worked on this from the Senators and the county, and nobody's going to tell me what partial abandonment is. But there's \$400 out there for something. But when you ask for it, they say, As long as you got a cemetery association, some office, you're on your own. You don't come to us and ask for any help to take out trees that have been there for 100 years or spray it once a year or something. They don't acknowledge partial abandonment. So I can see that, and so what is partial abandonment? To me, at least, you got to have one officer in the organization, but you can't be associated with any active religious organizations and you can't be associated with any municipal governments. You've got to be out there on your own. And

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all you got to do is be on donations. Everything's donated. We don't have no Sunday congregations, we don't...you have to out there and grab this, and you got to hang onto it because once you got it, believe me, it's going to go and you're not going to get it back because most of the donations that come in for pioneer cemeteries come from older people. They say, Get the young people involved. Well, they do but they're not like the old ones. And financial support has to be totally through volunteer donations and maybe if you got three or less burials a year because sometimes pioneer cemeteries will get a burial. Somebody wants to come home next to their parents or... We had one in Postville that come from Texas, and I got a request from Chicago, and I got requests from California, and I got requests from Tennessee that someday when they die, they want to come back to be buried next to their parents. But we're a pioneer cemetery that's one of the struggling ones. What can the \$400 be used for? Well, give it out in cash. Well, that was asked one time and they said, Well, if we give you cash, you might spend \$100 and put \$300 in your pocket. So they're not going to give you cash. Maybe an annual spraying, take care of the weeds

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because last time I sprayed our cemetery it cost us \$485. Maybe to fix the fence. Maybe to remove some downed trees because now the trees are getting over 100 years old, and they're old cedar trees, I know from experience, and they do come down and it nobody does it for nothing. They aren't...costs you to take them out. Maybe if you need some mowing, maybe the county could ask to come in and mow it, and this probably should be done through some letter. In Section 807 (LB 270, Section 12-807) you talk about 35 adults petition the cemetery. In short, you can't take 35 signatures from Columbus, Nebraska, and close the cemetery in Newman's Grove (sic). You got to have the people that are involved in the cemetery, the next of kin, the community or somebody that says that 35 signatures are required because you can get 35 signatures from anything, and then pretty soon the county's taking it over John Doe out there who's got parents or grandparents in there and say, Hey, I didn't know anything about this. So you can't take...it's got to be from the community. And you also got to put legal notices in the paper. And if the county's going to take over in 35 signatures, you got to put a legal notice in the paper that they're going to do this because there's somebody

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out there, I'll guarantee you, is going to raise the flag and wonder why. So I think 35 signatures is good, but they got to be within the cemetery and the relatives are in the community. In Section 8 you talk about 20 years. Twenty years, my gosh, a cemetery can be ruined in 20 years. We've had examples in Platte County. And the lady before us wasn't wrong. They run a pivot through it but now it's in the Supreme Court. Twenty years can be destroyed in a cemetery in 20 years. I would say if there's two consecutive years that hasn't been taken care of and the county supervisor or the county, somebody by the county seeing it hasn't been taken care of, is the county or someone has to look into it and see why it's not being taken care of, and if the county does take care of it, they should give this legal notice again that they're going to accept this responsibility, not just go in there and take care of it. But two years is plenty because most of these cemeteries are in prairie land grass and weeds in 20 years, that's just utterly ridiculous. In Section 808-1 you talk about access to the cemetery that you can have before Memorial Day and maybe in the fall. And I think the county has to provide a road to the cemeteries, and later on I'll

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mention why, but they have to provide a road to the cemeteries because in our pioneer cemeteries we get people all year long. They come from Washington, they come from California, they come from Kansas and Colorado. There's somebody there coming in and looking for their roots, you might want to say. I just had one here three weeks ago that come from Washington State, drove out here for that. In 809 (Section 12-809) you talk about "may include" and "shall include," may is to me is when you say "may," it's just something that I might have to do. It doesn't mean I have to do it, it's just there that I might have to do it. You ought to be more specific for these people to say this is the way it's got to be done. And also in 809 (Section 12-809) you don't mention annual spraying (inaudible). You got to take the trees and you mow the grass and you do those things and maintain the cemetery and the normal thing, but it doesn't say anything about spraying. And spraying is a big thing. And this Section, I think, is really a good Section and it should be enforced because it really tells them what they have to do, plant trees, tape trees, mow it, take care of it and tape it, take care of it like we try to take care of it. And it's not

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looked at that way. It's a minimal thing, something you have to do before Memorial Day and then forget about it. In 810 (Section 12-810) you talk about now if you're going to mow it, it's got to be mowed at least three times a year. You got to mow it Memorial Day and in the summer time in July, and maybe at Labor Day. You got to keep at it or going to get behind. And also in that Section it says something about putting directional markers to an abandoned or pioneer cemetery on a state highway. I don't think that is necessary because I think it just draws you to vandalism. If people want to go to your cemetery, they're going to find a way to get there. But I don't really think putting a marker out on the state highway to some directional to some pioneer cemetery is a very good thing. So much for the eights, now as for me as taking care of a cemetery, we have some issues that we got our money and we try to maintain it off the interest because we know once the principle is gone, it's going to be gone. I know, I've worked at it, so we try to work off the interest, and so when we spend our money it has to out of the interest. One of the things that really hit us is liability insurance. And we didn't have it for awhile, but we said, Why do we want to take liability

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insurance? Well, it's to protect the donations that we have because if we get sued, that's where the donations are going to go. So we have to pay this high cost of liability insurance, and it's about \$345-\$350, and we can find one insurance company that would insure us. So we're kind of stuck, I mean, we do that and we do that because maybe the person that gets hurt is honest, and maybe the people that mow it, that's in a different category, but if they get hurt, and they go to the doctor and the hospital and they say, Where you get hurt? And they say, In the Postville Cemetery, and that goes on the report and then the ball starts rolling. And the insurance get ahold of that and you can just see it coming back and you got insurance and you either got it or you don't have it. So we take out the liability insurance, and that's a big chunk. Also the other thing is that maybe it's small, but it's sales tax. I asked not to pay sales tax, can't do that, they won't give us sales tax exemption because we don't have a pastor and we don't have a congregation. But we're nonprofit. But we can't get sales breaks. So every time go out and buy the lumber, paint, shingles, fence, fix fence, fix tombstones, whatever, we got to pay the sales tax because we don't...I

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wrote and they said, You don't have a pastor, you don't have a congregation. You're not entitled to sales tax. But we're a nonprofit organization. So we go out and buy weed killer, we go out and buy stationery, we go buy paint for the church or whatever, we got to pay sales tax because we don't have a pastor and a congregation. We have it in the process and I don't understand why but we were told we should file with the Secretary of State's office. Now this church was formed in 1881, and they filed their articles of association with the County Clerk's office, and it's been there forever. So now to get anything going, they tell us that we have to file with the Secretary of State, and so I talked with the Secretary of State's office, and I said, Well, can we file the one that was in 1881? And she said, Oh, gosh, no. She said, They're too old. You got to do this all over again. I said, Why? She said, Well, it's too old. I said, They've been there since 1881, filed with the County Clerk's office in the County. She said, You got to have new ones. So we're in the process of whether...and the thing of it with our church, the land was donated to the Postville...well, the original name for our church was the First Welsh Calvinistic Methodist Church. And since this

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community had a post office, it's called Postville, Nebraska, so that's where we pick up the Postville. And so now they tell us since we haven't had a church and a congregation for so many years, we're not legal. But the land was donated to the church. Now some land was donated to the cemetery association, but ours is donated to a church. And since we don't have a congregation and since we don't have a church, they say we're not legal. And so we're in this legal thing now, see. Where do we belong? Do we really have to reorganize it? And we got trustees and we have officers since 1881. We've maintained that, we've never let it go, and yet we have to start all over. I don't know. There's that legal thing, and we're in that because we haven't filed with the Secretary of State, and I don't know what the Secretary of State's going to give to us, but I know if you don't pay your \$20 dues, you're out. You're no longer legal. And I don't know where that protection comes from. If it takes away the liability insurance, that's fine, but it's another \$20 that we have to pay, for a reason nobody has really told me why. So these costs take away from us and our donations and our interest trying to maintain a cemetery at some legal, at some status. I do

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believe that all pioneer cemeteries should file with the county as to location, number of graves, location of graves within the cemetery, the names of the graves, and they must be on a map. Now I've done that. I'm probably the only one that's ever done that, and it's on file in the County Clerk's office. But every grave has been measured and it's in there, and I think every pioneer because I know the county does not know where all their pioneer cemeteries are and anything about them. Pioneer cemetery property lines cannot be moved, cemetery property cannot be downsized while under municipal government maintenance. And by that I mean that some cemeteries out there, and ours in particular and not all of them, but they're on two-acre lots. They had room for a cemetery and they had room for a church, and I say that because I don't know who looks after them, but they can't take off a chunk of cemetery and not maintain it and just say, We'll just take care of the grave sites. I hope you understand what I'm trying to say because I'm looking 100 years down the road or whatever because ours is two acres. And we don't fill it up, but if it comes to push, let's not just fence off where the cemeteries are at and not take care of that and we'll just take care of where

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the grave sites are. You have to watch out for that. Pioneer cemeteries must be protected by all farm elements, that's farm equipment, because they're getting big, and cemeteries are sitting out there and some of them are in the way. We know that. And Postville is one of them that sits right on the quarter-mile line. We're right on the high part. And so we got to protect that just like the other ones that are in the county. You got to watch out for the farm elements. Small farms and communities, schools and churches are slowly replaced by big farm operations. The dry creek bridges have and will continue to be removed because of the large, overweight farm equipment and the replacement of cost. They don't want to replace a bridge over a dry creek that, because they just take them out. It's being done. Dirt roads have and will continue to be closed because of upkeep and cost. They have and they will. They're going to continue taking all these dirt roads out because these farm operations are getting big, and they're not going to be used and townships are looking for money. And someday I see electrical power lines going underground because these operations are getting so big. They're going to need to swing it for irrigation. And that's why every

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pioneer cemetery has to have an access road for automobiles because some of them are probably going to get squeezed out. So it has to be something to look at. For a person that takes care of it, there seems to be a lot of grant money out there for a lot of projects, but there's no grant money for cemeteries. Some of the population are reluctant to use tax money for earned dollars for good cemetery care. They don't want to collect the taxes, and I don't mean to be disrespectful but usually when you're in elected office, you don't want to raise taxes, and so you don't raise taxes for cemetery care. You don't put it off to the side in some special fund for cemetery care because most of the population probably don't care about some pioneer cemetery that they have nothing to do with, no relatives, they could care less. It's an acre sitting over here that they're paying taxes on, and so you're reluctant to raise taxes to help for this cost of cemeteries because you can't do it on \$500. You just can't. I know. You spend twice that much trying to keep a cemetery going. And then again, my admission that if the county accepts the care of the cemetery, who has the final say on cemetery property? They're just the caretaker, but who's going to look after,

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who's going to see that the county does what they're supposed to do? And that's why I go back to the Nebraska State Historical Society. Pioneer cemeteries are going to be here for a long time and they do need to be protected by good state laws and that's starting today. And this last comment I'll make is graves in pioneer cemeteries cannot be removed and placed in large cemeteries for the sole purpose of discontinuing care and maintenance to dissolve cemetery property. And that has been said. We collect money, I collect money for cemeteries for donations. Most of my donations come from the older people, and they're gradually going away. But it's tough. We pay liability insurance. Mowing is the biggest thing that's going to come around, and that's the biggest fear I have in my case because we're in the third family. They graduate and go to college or, you know, and they're gone. And so we're in the third one and I don't know how many kids these people got, but I don't know who's going to mow this. And mowing is the biggest expense and the biggest thing we have. If I ask somebody from Columbus to come out and take care of it, it's \$250 a shot plus mileage. And they're going to come out every month because that grass grows. And I don't know who we're going

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to get to mow in the future years. And if the county would mow it, that would be nice, but we don't want to do that. But we have issues that we're trying to keep pioneer cemeteries going. And I know the county's got three of them, and they just took on one this summer, and I know them in the neighborhood, and they're going to fall. It's going to come, one by one. And we need laws like the lady before and they need some guidance. We need some guidance, I keep talking, and it's not there, there's nothing to grasp on to. So I want to thank you for your time, and if you got any questions, I'd be glad to answer them.

SENATOR JANSSEN: Any questions? Arnie.

SENATOR STUTHMAN: Thank you, Senator Janssen. Robert, are there any cemeteries that haven't had anybody buried in for 10, 20, 30 years, or what does it look like for the future? And then there's not a board anymore either, and I'm trying to grasp onto, what is going to be the responsibility of us, the county or the state, to maintain them, or like you said, are they just going to be bulldozed over?

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ROBERT PARRY: Yeah, I don't know, I only know of one that's two miles east of us and that's in the Burrows Cemetery. I don't know if there's anybody been buried there, and I think there's only one person looks after that, and I think that's my second cousin Thomazin, and I think he lives Lincoln. But I don't think anybody's been buried in the Burrows Cemetery. But you find we haven't had a burial in ours for a long time, and then this one come up from Texas and wanted to be buried by his parents. And we still have reservations for people that want to be buried there. But I think if you look at Palestine okay and St. John's up there that Phyllis was taking care of...she was just great there. And I don't think they have very many burials in there, but there will be one occasionally. And Postville will have some too. I don't know if I'd answered your question, but...

SENATOR STUTHMAN: Well, I'm trying to get to the point where we need to be looking at this now, like you're trying to do, because in 25 years from now, there's going to be the issue of, You know, I think there was a cemetery here; we didn't hit any rock so, or tombstones. And so I don't want to see that happen, but there's not going to be any family

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members left, there's not going to be anybody taking care of it, there's not going to be a board any more. But there needs to be somebody that is a little bit responsible for upkeep of our heritage.

ROBERT PARRY: Yeah, we do because these people that we got in the cemetery there, we got one Civil War, which is my great-grandfather, and we got four of them that come from World War I, and one was killed in World War I in France, and the last one was buried in there he's a veteran from the Korean and Vietnam War. He come up from Texas. He just wanted to be buried next to his parents, so those things they come about. But to answer you, I don't know who's going to be the watch dog, and that's why I come back and say, Maybe these should be turned over to the Nebraska State Historical Society. Or somebody has to watch them, even when the county takes care of them because the counties just a caretaker, and this land was donated to an association, and it's still on the books as being the owners of that land. And so, who's the ownerships? But it's going to...we need guidance and we need...because I'm just looking 100 years down the road because they're going to all fall,

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and you're going to see some that, I know a place where there's a church on one side of the road and the cemetery on the other side of the road, and the church has nothing to do with the cemetery. The cemetery's strictly on their own because it was deeded to a cemetery association. And I know that church has got some people in it, but it ain't going to be there very long. The congregation's going to go. And I can tell you stories of other ones that are on the fence, that some of them are owned in cities. Churches have cemeteries out in the country, and they're having a hard time keeping their church in town going besides taking care of the cemetery out in the country. And cemeteries are the thing that they need a lot of help and a lot of protection, and we're not asking for the moon, we're just asking to keep our heads above water. And I take care of a cemetery and it costs us over \$1,000-some a year, and some of that stuff is donated, but that's basic. That's just mowing and insurance.

SENATOR JANSSEN: Robert, thank you very much for your testimony today, and most of the questions that you, or the concerns that you're voicing are concerns of the Senator

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McDonald, and this is why we're having this hearing today.
And I thank you very much for your testimony. It was very
interesting.

ROBERT PARRY: Thank you.

SENATOR JANSSEN: Next testifier.

NORMAN SMITH: I've appeared before the General Affairs
Committee in January. I think all that testimony should
be...

SENATOR JANSSEN: Would you please state your name for the
record?

NORMAN SMITH: I beg your pardon. My name is Norman Smith.
I'm a president emeritus of the Rose Hill Cemetery
Association in Albion. I beg your pardon for forgetting.

SENATOR JANSSEN: Oh, that's fine. We had to get you set
down first. (Laughter)

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NORMAN SMITH: And I appeared before the General Affairs Committee so I don't see any of the previous comments or testimony I made at that time would be relevant here. First thing I'd like to do, I would like to thoroughly endorse the gentleman who just spoke to you. Many, many, many of the things he's talking about are identical to what we ran into in re-establishing the Albion Rose Hill Cemetery. We, too, are a pioneer cemetery. Our first grave goes back to 1871. We were burying people there before the town of Albion was created. As far as the study, I looked at the way the study is worded. I think it's worded very concisely, and I think it would be very adequate were that authorized, and I'm talking about the LR 114. So I would certainly endorse it as it's written. I'd like to suggest to you, the board of operation, the operational board of the Albion Rose Hill Cemetery is a very, very rich resource. I just sat down and I counted up roughly the number of the, if we accumulate the years of these people in the operation of the cemetery, we'd come to well over 150 years. And we've got just one example. We have the man who usually people say he's the caretaker, but actually he's on our board, but that man has been digging graves at Rose Hill for 35 years and began with

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his father digging graves by hand. So the accumulation of that wealth, that's available to any committee who would like to come out visit us, and I highly recommend that if this study goes through, that it be an on-site visitation. We say it's Albion Rose Hill. It's not until you physically see, physically climb Rose Hill you will then understand what we are attempting to protect. What's happening to us now, and since I spoke to you, is we're meeting the impact of change head on. Not only did we end up with a cellular tower, which was what we fought at that time, and we now have a 100-million-gallon ethanol plant will be built in Albion within a mile radius of the cemetery. That means 50 to 60 jobs. That means impact in the area. If you look around the city of Albion today, you will see new houses going up. You'll see old houses being torn down, so there's plenty of activity there. If you look in the Albion paper, you will find each week about 40 pieces of property listed for sale. We are, have always been a pro-active cemetery board. We try to look ahead and see what's happening, what's likely to happen. Our prime concern is the protection of the private property owner. Came down today with us there's five members of the Albion board, but yet

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every person from Albion here is a private property owner and has a stake in the Rose Hill Cemetery from the standpoint they have one or more loved ones interred there. So I can say to you, you'll get 100 percent cooperation in participation. You want to sit down with us on a face-to-face meeting and say, Look, what do you do about finances? Are you following the financial of the cemetery log? We would tell you honestly no. They are no longer compatible, but we will say we have created something in place of it that we think meets and foots the need. But the point is we have no sanction from the Legislature. In order to say, Yes, that's appropriate; go ahead and do it. What's caused us the greatest grief so far is that for 134 years that cemetery operated by itself as an association. We found 1989 we had people then that didn't know such a thing as a cemetery association laws existed, and then we started the struggle in 1989 to reconstitute and restructure the cemetery. And I think looking at it, the greatest thing could come from a hearing would be to have a direct contact with the Legislature. So we've got a direct contact today only because we started out by writing directly to Governor Johanns and saying, Look, this is what's happening

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out here. We have planning and zoning laws that are overriding cemetery association laws and we cannot defend ourselves. And we reached the point of litigation. We spent over \$2,000 private donor money trying to fight the thing and realizing no, the problem lies with the Legislature, the problem lies with looking at outdated laws, the problem lies with recodification of laws. So the final thing I'd like to see as an outcome, and this is making my final comment, I would like to see as a result of this setting, we reach a point where we say, There is a certified cemetery association functioning, and just as we certify nursing homes, we certify schools, we should be certifying a cemetery association that is operating according to the association laws. We need to look into the future, we recognize it, and that's what we're striving for. And that's all I really have to say. If you have any comments.

SENATOR JANSSEN: Questions? Do you have one?

SENATOR CONNEALY: I do. If you were certified as an association, what rights would you have that you don't have now or what privileges?

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NORMAN SMITH: I think number one, recognition, that there is somebody looking over the whole operation. You know that when you have...I should say accreditation would be a better word. If it's an accreditation as we accreditate (sic) schools and so forth. Right now there's no one to turn to. That's the reason why we went directly to the Governor and said, Look at the dynamics of this problem and that is a result of saying, Share it with Senator McDonald, and we did. And that's all we're after. And I think as this gentleman before proved to you, you will find people who are on these cemetery association boards are very, very deeply dedicated people. I've live in Albion 30 years and one-half of the time I've lived there, I've served on that board. So they are people who are very well founded in the history of that town and they know the people, and I think that's a very important thing. If we don't get protection where we are right now, we are vulnerable. The next time a money organization comes to town and says, Well, we'd like to develop that land next to the cemetery, we have no absolute way to stop this. And we too, we're not boxed in yet, but we figure we may have 20 years. Anything else?

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SENATOR JANSSEN: Senator Stuthman.

SENATOR STUTHMAN: Thank you, Senator Janssen. Norm, you've got a cemetery association, and it seems like you're fairly active and stuff, and Robert is trying to make it so that there isn't a cemetery association or there isn't any funding. How would you try to make both of these things possible if you want to get accredited, who's going to be responsible for the money part of it, the maintenance upkeep? Would that imply that if the county would be the responsible one, or if the state would be responsible, or like yourself, your board? Could that be one of the above?

NORMAN SMITH: That I think probably is the proper premise of your inquiry. You're looking for ideas and looking for a description of what the problems are. We can tell you rapidly, as I say, we just go down the line and say, Look, when we encountered this, this is what we did. We ran into the founding of the perpetual trust fund and we can take it to a lawyer and he says, I don't know what to do with it. So we have to get it to where to me it's a viable structure

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which we can then project into the future and say someone is responsible, someone accredits this. And that's the kind of thing that we don't have. We've done so many different things in order to meet the intent of the law, and yet we find ourselves more or less an orphan. So...

SENATOR STUTHMAN: Thank you.

NORMAN SMITH: Yes, ma'am.

SENATOR JANSSEN: Senator Cornett.

SENATOR CORNETT: Well, it's not really a question. It's just a personal statement. When you said "visit the cemetery," someday...

NORMAN SMITH: That what?

SENATOR CORNETT: You said, mentioned visiting the cemetery one day. It's just a personal note. I spent an entire day there with my great-grandmother when I was a child looking for her relatives.

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NORMAN SMITH: Well, good for you.

SENATOR CORNETT: And I remember the cemetery well. We spent the entire afternoon there...

NORMAN SMITH: It's very hard to...

SENATOR CORNETT: ...and it was not in very good shape then. I mean, it was...

NORMAN SMITH: What year would that have been?

SENATOR CORNETT: Oh, god, we're talking probably 30 years ago.

NORMAN SMITH: Oh, yeah. It was on the verge of financial bankruptcy in 1989, and that's where we started. Remember I told the Committee before. One of the things that we do is we communicate with all property owners that we can, and they're classified as private property owners, and we give out a deed and suggest that they register. Now they're

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required that they register in order to prove that they deserve to be notified when there's any activity that's going to be put around that cemetery or to box it in. And that's the only thing I can say. I'm a firm believer that the private property owners, whether the owner is absentee, which so many of them are. This gentleman was talking about where he received information. We get responses from 28 different states. We're mailing out 600 to 700 information letters every year, and all we're doing is saying, This is the state of your cemetery. These are the projects we're working on. And any support that you would care to contribute is fine. And I've mentioned before and this gentleman alluded to the same problem. Because there was no recodification of the laws, we do not have 501(c) status. And the state turned around and then with the sales department said, Well, you cannot get sales tax exemptions because you don't have the 501(c). So we, too, end up paying sales tax. So it's very a lot in common with what this gentleman had to say, same kind of problem.

SENATOR JANSSEN: I think that's particularly what Senator McDonald wants to get straight.

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NORMAN SMITH: Oh, yeah.

SENATOR JANSSEN: Get something in statute. I mean, it's not going to satisfy everyone, and there's going to be problems with it, but I think she's on the right track.

NORMAN SMITH: But we do have generous donors.

SENATOR JANSSEN: Oh, I'm sure. Now what do you do when you do receive money? Do you put that, do you have a trust fund set aside somewhere for these receipts?

NORMAN SMITH: That's where we finally ended up going to a bank and appointing that person to be our appointed financial officer, then structured the assets of the cemetery so they are under audit. Yes.

SENATOR CORNETT: Do you have to pay taxes on those donations then?

NORMAN SMITH: So far they haven't started that (Laughter),

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but we hold our breath.

SENATOR JANSSEN: Don't mention it, huh?

NORMAN SMITH: Oh, yeah.

SENATOR CORNETT: I mean, if they're not a nonprofit.

SENATOR JANSSEN: I think we can just leave that lay.

SENATOR CORNETT: Oh, yeah.

SENATOR JANSSEN: We won't say any more about that. Any other questions? Thank you, Norm, very interesting.

NORMAN SMITH: Thank you very much.

SENATOR JANSSEN: How many more testifiers do we have? One, two, three, four, okay. Why don't you start working your way up, someone.

NANCY BEACH: Good afternoon.

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SENATOR JANSSEN: Good afternoon.

NANCY BEACH: My name's Nancy Beach, B-e-a-c-h. I am the president and chairman of the board of the York County Historical Association, York County, Nebraska. I have spent the last six years on a project we thought fairly small and we thought fairly simple indexing all the cemeteries in York County and also one township surrounding York County. We're in our sixth year, and we're not even close to being done yet. One of the things that came up this year, which is the primary reason why I'm here today, is we had a cemetery that we wanted to try to get the county to maintain. This is a small cemetery, it's only two acres, it's in a middle of a section. It has approximately 12 to 20 burials in it. Some of them that were there earlier were moved out prior to 1925, so technically it's a partially abandoned cemetery from that standpoint. It sounded pretty simple. This is a cemetery that was established in 1882, so it met the guidelines for the age. It has Civil War veterans and homesteaders in it, so it met that qualification. It hadn't been maintained for 20 years;

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in fact, it had been substantially longer than that. In the mid-1960s an Eagle Scout had gone into that cemetery and used it as his project to get that award. Obviously, for him to take it on as an Eagle Scout project, it had to be in disrepair for it even to qualify for that. That was in the mid-1960s, so we estimate that it was probably 20 to 30 years before that that it had been neglected. It's now 2006 (sic), we're talking 40 years later, nobody has touched it in that 40-year period, so it obviously meets that 40-year window. We now had a Scout that was willing to go in and clean up the cemetery again. Because of that 20-year minimum, if he were to go in and clean up that cemetery prior to having it become an abandoned and neglected cemetery by the county, that 20-year clock starts all over again. And I don't think that there's anybody in this room that says it makes sense that because in a 70-year period the cemetery twice, we're purposely going to keep everybody out of that cemetery, purposely make it go into a neglected state for 20 years before we can go back to the county and say, Will you please mow the cemetery. It doesn't make sense to do something like that. So when it comes to that 20-year time span, I would encourage you to look at a much

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shorter date. I know somebody recommended a two-year one. In this case, that would probably...I could see a longer span than that, but 20 years is just an extremely long length of time. If that Scout went in and cleaned that cemetery up this next week, and a volunteer cedar tree started growing in there early next spring, the size of that tree in 20 years is going to be huge. The plum thickets have already taken over the entire north third of that cemetery, and the stones in that section we cannot even get to them. Consequently, our county board asked me to try to rush the process before that Scout got in there this fall to work on it. To say I hit roadblocks would be an understatement. I've spent the last three months trying to get to the point that I could go in front of the county commissioners. It started off with pulling out the land records and finding that the cemetery property was deeded to the trustees of the cemetery association. So it was not deeded to a cemetery itself but to the trustees of an association. The association did not file any incorporation papers at state level, nor did they file any at county level. The county attorney was saying I then needed to petition the district court and ask them to dissolve the

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association before they should even consider abandoning it. I don't see anything in the statute that says that ownership is even a question when you have a cemetery being declared abandoned and neglected, but I will be the first to admit I'm not an attorney. Then comes the problem if it doesn't exist, what happens if there was no legally, no such association on file? So I talked to Ron Moravec at the Secretary of State's office, and he said in theory without researching it further, it would default that the transaction didn't even happen, that there was no such association, so consequently the land could not have been deeded to their trustees. If that happens, then you revert back to the original deed which says that it belongs to the Brabham (phonetic) family. Now you're talking about Mr. Brabham (phonetic) having been dead well over 100 years. We would have to chase down all of his, what's probably great-great-grandchildren by now and say we find 42 of them. Does that mean then this guy's one-forty-second, this guy owns one-forty-second, this guy owns one-forty-second? You know, the intent was to give it to the cemetery, that was the intent of the land. The owner that gave that, he's buried there, his wife's buried there, his children are

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buried there, his neighbors are buried there. I don't think there's any question but the intent was to have a cemetery. Those are they type of questions and problems that I hit just getting to the county commissioners. I appeared before them on Tuesday of this week. They still are not going to accept responsibility for the maintenance added, although they're going to discuss it and vote on it next week because the cemetery is in the middle of the section and there's no way for them to even get back there to mow it. So without a road they are very hesitant accept the responsibility for maintaining the cemetery. So here we sit after all this time. The issues that brought this up caused me to go through and look at the Chapter 12 of the State Statute which deals with abandoned cemeteries. So I would like to just offer you some feedback as far as what I've seen on the various cemeteries within York County and the surrounding area just to give you some thoughts as far as how you're going to progress on this. The first one is, how are you defining a cemetery? Is a cemetery some land that is formally been set aside through the legal process to be owned by a cemetery, by the trustees, or by an association? Or is it just any burial spot that might exist? If you have

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a homesteader buried on his original homestead land but he's the only burial, is that a cemetery? If you have a cemetery that part of the bodies have been removed and you know that there were some children buried in there, but because you could not find any remains of them and because they do not have markers, is the cemetery abandoned and can be used for purposes now besides a cemetery? Can a farmer farm over it? In 100 years there's nothing left of those children. There's no way to move those children. The two adults in the cemetery were moved; the children are there somewhere, we don't know where, but technically now that cemetery is being declared as abandoned and abandoning, it doesn't exist any longer. From my standpoint there's still three children buried in that location. You also have situations where there are, especially in our Mennonite community, private burials on land that are families and sometimes multiple generations. There are no markers. There's nothing except for the family history that says that knoll in the middle of the alfalfa field has nine people buried in it. You have nothing except for going down a lane to a house, the farmers there are quite good, but you suddenly see a grassed area surrounded by corn, and he knows that there are family

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members buried there. Is that a cemetery? There's nothing in the state statutes that I can see that defines what an actual cemetery is, and if it differs from being a burial ground and does it have to be more than one person. So that is something that I would like to see you consider. The other thing on abandoned cemeteries is a simple word change would make a huge difference on what I went through. with the exception of 806, 12.806 (12-806), everything says "abandoned and neglected." If that could be changed to say "abandoned or neglected," it would have made a big difference in my case. It's obvious that a cemetery is neglected if you've got weeds taller than I am, you've got brambles as big around as my arm, and you've got a thicket bush that has now taken over a third of the cemetery. That's obviously neglected. Our county commissioners were having a very large issue on whether or not they could declare it as abandoned. They had not issue if they could declare it as neglected, but there's only one Statute that I saw that used the word "or." So if that could be changed, that would have in our case made a huge difference. The other thing would be what happens if the county takes over an abandoned cemetery? Who has the ownership on that? From

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what I can see, ownership does not change, which is why I was questioning our county attorney. Why did we have to petition district court to abandon a cemetery association? What would be the purpose of doing that if the ownership didn't change at all? Right now there's nothing that tells you about that. How do you deal with associations or trustees that are owners of land that are defunct? If they never filed incorporation papers, if they long since have ceased to exist and you don't know who they are. What happens to that land? We have a cemetery in York County that was deeded to the trustees of the cemetery in this particular case; no idea who they were; nothing on file for them that we were able to file. We now have a foundation that wants to control that cemetery. We actually through our Web site, one of our families that's buried there, one of his descendents has given us \$10,000 to repair that cemetery. They want to set up a foundation to do that. Can they legally say, We're just going to start a foundation, and we're going to take over this cemetery? I don't know that it's a possibility that they can do it. If they want to take down the old gate and the old fence and replace it with a standard chain link fence, can they do that? It's

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technically part of the property owned by the cemetery trustees. So can somebody just at random form a foundation and say, We're taking over and we choose to take down the fence? When you don't have an association on file, that becomes an issue. We also get problems pertaining to 801 (12-801) in that that talks about individual lots that need to have maintenance on them. What do you do when you have a cemetery, and we have one in York County, that under almost every bush and every tree in that cemetery, there's at least one tombstone, sometimes two or three? Bushes have just grown with time and they've ended up covering a stone. The cemetery does not want to have those bushes cut back because "it adds to the character of the cemetery." Does the family get the ability to overrule them and say, Yes, we can cut it down? Can anybody else say, Can we please just cut them back long enough to get to the stone, so the stone's visible? At this point in time, we've not been able to get permission to do that. Same thing if a stone has fallen down under a bush. At this point in time we have not been able to get permission to upright that stone again, even though it would be at no cost to the cemetery. There's also a question about if stones are damaged, in particular if

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they are sinking or if they have started to tilt and then fallen into pieces. At this point in time, if I'm understanding the statutes right, you really need to be contacting the descendents of those people and getting permission to do that. That's not always viable. And the cemetery I was telling you about, Lincoln Creek Cemetery, where we did get funding on that, it's \$75 to fix a stone. The guy has given us \$10,000 to straighten stones and mark the unmarked graves. Seventy-five dollars for every stone that we straighten. Out of the 150 stones in that cemetery, at least 100 of them need to be straightened. So for us to start contacting all of those families, I don't know that I could get all of that done in my lifetime. And what do you end up with if you've got family members that disagree among themselves? We are talking multiple generations later. That's something that would be nice if there was a way that interested parties, whether it be with county approval or state approval or preservation office approval, that if we do have funding and qualified people to straighten them, that we would be able to do something like that to preserve them. On abandoned cemeteries under 807 (12-807), there's a cutoff date that says cemeteries established under

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qualifications of cemeteries have to be established before January of 1900. I think you're going to see that changing with time. At the time the statute was written I'm sure that was a very logical date. That certainly would define a pioneer cemetery, but what are you going to do with cemeteries that were established in the early 1900s? They're no longer active cemeteries, there's no longer being burials there. At some point in time, we're going to have the same situation. The difference is they're not going to have homesteaders in it. They're going to be established in the early 1900s. Are you willing to just set aside and say there's no recourse for cemeteries that are being neglected after that time frame? I think that's something that you might want to look at saying that they were established 100 years ago or 75 years ago and give something that would allow for some flexibility on that date, so as time progresses that it moves forward along with it. There's also we hit some questions as far as access. Right now if it's an abandoned and neglected cemetery, it's got to be open to pedestrian traffic. There's nothing that says access for people that need to go in there with mowers. And the case of the little two-acre cemetery we were trying to

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get abandoned, it's a half-mile walk through a bean field, irrigated bean field. If you're trying to take a mower in by hand for a half mile in and a half mile out through an irrigated field...

SENATOR JANSSEN: Is there a fence around this plot?

NANCY BEACH: There's no fence around that particular cemetery. The Scout that's going to do it is going to put corner posts in to define the cemetery. And I called...

SENATOR JANSSEN: Is the landowner, has he stayed away from it, I mean, farms up around it?

NANCY BEACH: He farms up around it, and it appears that he's farming over one corner. He just has, instead of making the square corner, there's no stones there, so he just angles it.

SENATOR JANSSEN: Um-hum.

NANCY BEACH: So the access for...it's open for pedestrians

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it's easier to walk through the field, but not easy if it's muddy and wet, but you can get in...

SENATOR JANSSEN: What is the distance from the closest road?

NANCY BEACH: Half-mile.

SENATOR JANSSEN: It's a half-mile, okay.

NANCY BEACH: Yeah, half-mile in that particular case.

SENATOR JANSSEN: Was there ever a church there?

NANCY BEACH: No.

SENATOR JANSSEN: Okay.

NANCY BEACH: There was not.

SENATOR CORNETT: I assume the cemetery has an easement across the farmer's land?

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NANCY BEACH: No, they don't, which is why the county at this time is reluctant to accept responsibility for this. There also comes into, on access, the liability when you're crossing that when you're having to cross private land. If I'm crossing through that bean field and I fall and I'm carrying equipment, who's liable? Is it the farmer because I'm crossing his land? Same thing in cemeteries. They are riddled at least in York County with badger holes and gopher holes and moles, in some case. I can't tell you how many times I have fallen in cemeteries. Fat ladies don't bounce, we just go plunk, and...(laughter)...you step over one hole and you just put your foot into the next hole that's covered up with grass, and down you go. Same thing if you're crossing a ditch. We have a small cemetery that's in the corner of a field. It's not a formal cemetery. It's got probably nine children in it that we are aware of. It's in the corner. It's been a hog lot at times. It's been a pasture with cattle in it a time. Those stones are buried under dirt. We're going to be digging them out yet this fall. To get to that I'm going to cross a fence and go through a barbed wire fence. If I'm crossing through the

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ditch, I'm on the county's right of way. If I get cut by the fence and it's a rusty old fence and I get an infection and have a problem, who's responsible? Where's the liability on that? If a cemetery doesn't have an access road or if it's declared abandoned, if I'm...York County has one cemetery that is abandoned on our county line along interstate. If I go in there and I fall in a gopher hole and I break my leg, who's responsible for that? Now you don't cover liability at all. I don't know if you can legally put something in there on abandoned cemetery that if there are pedestrians in there, they go in there at their own risk. But right now, I think the county would probably be liable on something like that. I can from the county's standpoint understand why they would not like easily to accept abandoned cemeteries. In York County alone, if I were to take all of the cemeteries that I've been to that are not currently being maintained, it can be as many as twenty cemeteries. If they were to spend \$500 in each of those cemeteries, that's a pretty big budget item to all of a sudden expect the county to be responsible for. We also talked about signage and vandalism. Sometimes does just that. If this little cemetery in the middle of the county

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had easy access and very high visibility that there was an abandoned cemetery back there, I don't doubt that there would be kids that will go back there just to have a place that's out of sight when doing it.

SENATOR JANSSEN: I don't think you'll find too many kids that want to walk a quarter mile to the center of a section though.

NANCY BEACH: They wouldn't at this time, but if there is an access road, I think they would. I think they would. We also question in looking at the statutes, what happens if you have a cemetery district? York has several of those where they've actually created cemetery districts. They have a bill levy that they collect and that's used for maintaining them. What happens if I find a private cemetery or I have a private cemetery that's within that district? Does that automatically get looped in and the district is then responsible for it because there's no levy being collected for that area? I obviously wouldn't want to create a new district and double tax the people for cemeteries. That is just something I'm just throwing out

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for thought. I don't know what the answer is on that one, but we do have a situation where we have a district like that this time. We've got personal people, private people that are maintaining it. When they die that could very well become a question on who maintains that cemetery from that. I also see nothing in the statutes that says that there's a way if the county has taken on maintenance of a cemetery, that you can reverse it. If you have a cemetery that's been declared abandoned or neglected, and somebody comes forward and says, We're willing to start an association and assume maintenance for this cemetery, I don't see where there's anything that allows that to happen at this point in time. It was mentioned earlier about downsizing cemeteries and how detrimental that can be. I will second that one in that there's often unmarked graves, and if it appears that there's a portion of that cemetery that's not in use and you release it to the farmer in that area, there's nothing that says there aren't unmarked graves in that particular area. Where a cemetery hasn't documented the burials or those records are no longer accessible, you have no idea what you're giving away. On the Statute 12-1401 that talks about the statewide registry, I see some issues that you're going

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to have with that particular statute. Sometimes you're going to have, even within the same county, cemeteries that have the same name. York is a very small county compared to many of them, yet within just our county we have two Bethesda Cemeteries, two Greenwood Cemeteries and three Zion Cemeteries. Take your pick. If you are just registering by cemetery name, you're going to have problems. You also have cemeteries that change their names, and let me tell you that's always fun when I try to compare mortuary records and land records and cemetery records. Ebenezer Cemetery got a new church; they changed their name to Faith. Faith changed their name; it's now got a new name. So I can think of at least two cemeteries that have had three different names. So you also have that on who's going to keep track of those changes or even know what's there. If the information on the registry is going to be published or open to the public, whether it be on-line or through documentation at State Historical, it would be nice if there's a way selected information within that could remain private. If I'm John Doe and I have a cemetery on my property and I register it with you, I don't know that I want necessarily to put my telephone number out there for anybody and everybody to try

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to contact me. The question about the cemeteries that are the unmarked no stones, are they also going to be part of that registry too? They have no name, they simply are a burial spot within a private land, some being farmed over, some not. The records for cemeteries, one of the things that has not been covered and I think you're going to see happening more and more, is the cremations. And the people that go into a cemetery and they do their own burials or they scatter their own ashes, they go to grandma and grandpa's lots, they dig a hole, they put in a box and say their prayer and they're gone. They don't notify the cemeteries. The obituaries just say, Burial by family at a later date, so you are losing a huge number of burials every year that there's no way even to know where they are because the families are allowed to do that. If they go in a cemetery and they scatter ashes and don't tell the cemetery, there's no record of it. To the best of my knowledge, there's nothing legally that requires people other than on burials of bodies to put down on a death certificate where that burial is going to be. The last notation I would like to make is under 80-107, which is the Veteran graves, the markers when furnished, and in that it states "metal

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marker," but if they're a veteran, they can order any myriad of stones. I just ordered two stones for Civil War veterans in a cemetery that they were in unmarked graves. I can still get the old Civil War style markers. Those are still available. It would be nice if that was changed so that if it is a veteran, that it would uncover any marker available through the Veterans' Affairs Office for the veterans, not restricted to a metal one. That's the end of my comments. Sorry for rambling on.

SENATOR JANSSEN: Okay, are there any questions of Nancy? Senator Stuthman.

SENATOR STUTHMAN: Thanks, Senator Janssen. Nancy, you stated that if it was abandoned for 20 years and then one year it was cleaned up and then it had to go another 20 years before it'd be another abandoned time...then why wouldn't that be if it was 20 years then it should be every year after that taken care of?

NANCY BEACH: In 12-807, Number 3, for this is requirements for abandoned and neglected pioneer cemetery defined.

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Number 3 says, Such cemetery has been generally neglected and abandoned for a period of at least 20 years. The question that came up for us on that particular cemetery was "generally neglected and abandoned." What qualifies for that on a 20-year period? If you have a Scout or a service group or I'm the farmer that lives next door and I just think it's the right thing to do and I go in and clean it, at what point does that 20-year clock start ticking again? That's the question our commissioners had.

SENATOR STUTHMAN: Okay, thank you.

SENATOR JANSSEN: Any other questions? Seeing none, thank you.

NANCY BEACH: Thank you.

SENATOR JANSSEN: Next testifier please.

LARRY DIX: Senator Janssen, Members of the Committee, for the record my name is Larry Dix, that's spelled D-i-x. I'm the executive director the the Nebraska Association of

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County Officials. And today we've had a lot of discussion, good discussion, and a lot of it is about the responsibilities or lack of responsibilities in regards to the counties, and so I want to address a little bit of that, talk a little bit about that. At this point from the counties' perspective, it's a matter of general authority or lack of amount of general authority, and the resolution of the problems that crop up and the additional burden that we may place on county budgets, and I'll give you a couple examples of that in just a moment. First, cemetery associations are created, as we know, all throughout the state, and over time many of these associations have merely dissolved through the passage of years and then they simply cease to exist. A cemetery as we know may fall into disrepair and at some point fall under the umbrella of what we call abandoned cemeteries. At that point in time a county may then begin to provide maintenance to an abandoned cemetery, as we have to a number of them. We should try to determine where that financial responsibility will fall, especially now that we're entering the part in county government there's an on-going list, an ever growing list of financial responsibilities that are placed upon counties,

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and of course, as we all know, with limited funds. I think earlier we had a gentleman talk about it would be great if we would have every cemetery, if we would have a road to every cemetery. And while that may be a good idea, we've also seen the example from a cemetery in York that happens to set in the middle of a section, and if we were to construct a road to that cemetery, the county would have to go in and probably build the road to proper standards. We would have to acquire right of way. We would have to purchase land from the adjoining landowner to build that road. So you can start to see the process and the amount of money and the financial responsibility that we may outlay to do that. And of course then, once the road is built, then it is forever the county's responsibility to maintain and clear the snow, and so it sort of goes on and on. Certainly we're sympathetic to what everyone here is saying because we know that that is an issue. We know that it does truly occur. But counties too have very, very little wiggle room here within our financial responsibilities and with some of the lid limitations and some of the counties that are at their lid limitations, it certainly cannot be done. A number of folks have testified about the \$500 that the

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counties can, if they elect to, spend on the maintenance of cemeteries. Certainly if we look at York with the 20 cemeteries that's right, it does add up pretty significantly. One point that I want to bring up is I believe that as we evolve and we go forward in the future, I think the counties should be looked at possibly as the last resort for cemetery maintenance as opposed to maybe the first resort for that given the financial situation that a lot of folks are in. Currently there's a specific case that we have an adjoining property owner that is the county is maintaining the cemetery. And in fact, I think they've utilized Eagle Scouts to do the maintenance of the cemetery, but the way the Statutes are structured, there isn't any clear definition of ownership of this particular cemetery. And so the county is maintaining it, the landowner has gone out and elected to take down the fence and actually put up a couple posts and run a pivot wheel through the cemetery, and while the wheel is not crossing any graves or any of the tombstones, we still have a situation where the landowner says, Well, I don't want to run my pivot up to that point and then go back around. It makes more sense for me to run that pivot in a complete circle. And we're struggling, the

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county is struggling with the ability or the legal authority to say, You cannot run that pivot through that cemetery because the landowner says, Well, county, you do not own the property. The county can say, Property owner, you don't own the cemetery. And it's an old abandoned cemetery, I believe it used to be part of an association, but of course, no one is around anymore.

SENATOR JANSSEN: The who's on first situation.

LARRY DIX: Who's on first. And we go back and forth and back and forth. And at what point in time do you really start to issue or go through a long battle court case to resolve this situation? So that's one of the things that the counties are looking at. Where do we do because the statutes do not lay out that legal authority for us in that particular situation. And you ask a number of people and you may get two or three different opinions on that. So those are a couple of things that we jotted down. I question if it's really the...whose priority should it be, I guess, to maintain these old cemeteries? As a part of our state heritage is it a county responsibility, is it a State

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Historical Society responsibility? It's a question we've tossed around, Senator Janssen you and I have talked about this a number of times. It isn't that the counties are unrealistic in this, and believe me, a number of the counties are your best advocates of saying we have to do something to protect this heritage. A number of counties were leading the way where every year it seems like we're maintaining more and more cemeteries, but as the young lady said, where we have to get in and mow those on areas where we have to walk to them, it's very, very difficult for counties to continue to do that process. But from the point of the counties, I think to summarize it, where we're going through the process we just ask that we examine those statutes and hopefully come out of it with a clear and concise responsibility so that we can come to it and say, Whose responsibility is it? Who is really responsible? And how do we resolve any disputes? If we do come to a dispute resolution, how do we go to that? Is it that we have to go to court? Is that really where we have to go? I don't know, but I will pledge and I will tell you that thus far every time we've had a meeting, our association has been at the table. We want to work to resolve these issues. We

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know we're not going to resolve them overnight. These are very tough issues because every step of the way people bring up questions, and everybody's sort of scratching their heads saying, My gosh, I never thought of that one. Now how do we deal with that one? So those are some of the issues. I don't want to repeat anything everybody else has said. But certainly be happy to try to answer any questions that you may have.

SENATOR JANSSEN: Any questions? Thank you, by the way, for your... Matt.

SENATOR CONNEALY: So for every abandoned cemetery that you take rights over and responsibility over that you'd stop a pivot or whatever, there'd be a cemetery that you're maintaining. Or if someone would not want you to take the responsibility, you'd take the rights off for.

LARRY DIX: Well, right now when we take one over and we maintain it, we simply maintain it. But we don't have any legal ownership or we can't find that we have any authority to...

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SENATOR CONNEALY: But if we change that, it would be probably a cemetery or a local community's that had allegiance to that cemetery that would not want that either.

LARRY DIX: Certainly. We're sort of in a little bit of a Catch 22. I'm sure there's going to be some of those situations where a cemetery is abandoned and it comes back or it reverts back to the county. There's going to be some people unhappy with that.

SENATOR JANSSEN: Any other questions? Thank you, Larry, for being with us today. How many more testifiers do we have? Okay, try not to be repetitive. If you've got something new, we'd certainly like to hear it.

GARY KRUMLAND: (Exhibit 1) Senator Janssen, Members of the Committee, my name is Gary Krumland, it's spelled K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities. I just want to just briefly touch on a few things. One of the purposes of the study is to look at consolidating and updating some of the statutes. And if you

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look at the statutes on cemeteries, and I'm particularly talking about municipal cemeteries, they're scattered in about four different chapters of the statutes, and some of them were adopted in the early 1900s, 1917, and haven't been amended since then. So there is a need to do this, I think, at least to look at it. However, we did talk to several city and village officials about this, asked for suggestions, and really haven't gotten a whole lot of response. I think part of it is every time we do look at an issue like this where we think we need to update and consolidate, and those of you who are on Urban Affairs Committee have run into this before where we have different classes of cities, and every class of city has their own statute that's designed for the size of the city, for the population, for the amount of money, revenue they can generate, that when you try to consolidate, you're stepping on ways that people have done things for a long time and laws have been put in there for a particular purpose. so we didn't get much response but if that is something the Committee wants to do, I'd be happy to work with you and try to work through some of these issues. I did hand out just a couple things. Earlier this year during the 2005 Session,

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there were two bills that the League was interested in that did pass relating to cemeteries, and the Committee dealt with both of those. And Senator Janssen and Connealy introduced the one bill. One had to do with perpetual funds for municipal cemeteries and the other had to do with the procedures to transfer a cemetery from a cemetery association to a city or a village. And I won't go into those, but I just wanted to thank you for your help. And that kind of characterizes what we've seen over the last few years, if an issue comes up, then we kind of deal with it piecemeal without looking at the whole issue. There were two issues when we went out and talked to people that were brought up, and they seem to be relatively minor but they pretty much have to do with the smaller communities and villages mainly, sometimes some of the smaller second-class cities, when they create a cemetery board to operate the cemetery in this city or village, the statutes are very particular. It says you have to have six members and then it gives them specific duties. And some of the smaller communities are having a hard time finding six people who are willing to serve, meet monthly and do all that, so some people have suggested maybe a little more flexibility to say

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it has to have at least three members and let the local community decide if they want more. There is one city that said they're having problems because since the cemetery board has hired somebody to maintain the cemetery they have monthly bills, they need to prove claims every month. Well, to get six people together for 10 minutes to approve claims has been a real problem. They're having a hard time getting quorums and wondering if there's maybe some way we could create another procedure so maybe the village board or the city council can approve some of those claims, and the cemetery board wouldn't have to meet every month and that would make it a little more desirable for some people to serve. So those are the kind of little suggestions that we've been getting, but again, I'd be happy to work with the Committee on anything the Committee decides to do on this issue to try and work through some of these problems. I'd be happy to answer any questions.

SENATOR JANSSEN: Be certain we'll keep you in the loop.

GARY KRUMLAND: Okay.

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SENATOR JANSSEN: All right. Any questions you have of Mr. Krumland? Seeing none, thank you, Gary. Next testifier please.

GREG EASLEY: My name's Greg Easley, E-a-s-l-e-y, representing the Nebraska Cemetery Association. I myself have been in the cemetery business for 32 years, and I've heard a lot of these horror stories from a lot of different associations over the years, and I get about five or six calls a year because I'm the one that receives calls. The state, the Insurance Department refers them to me, and I'm chairman of the Nebraska Cemetery Consumer Council also.

SENATOR JANSSEN: Excuse me, sir, would you repeat your name again so that I don't think it got picked up on the...

GREG EASLEY: Oh, Greg Easley.

SENATOR JANSSEN: Thank you.

GREG EASLEY: E-a-s-l-e-y.

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SENATOR JANSSEN: Thank you.

GREG EASLEY: So I'm all for these statutes being done because there are a lot of them twist and turns which prevent a lot of the associations from getting anything done, and they're kind of caught in the middle. And even if they do have situations where they try to talk to the county, sometimes they because the law is written such a way, they're caught in the Catch 22 where they can't get something done and they don't have any recourse. Examples of the farmers taking over the land and there's many ways to answer this, and I'd be glad to talk to you later about it. And there are a lot of easy answers, but by just incorporating some words in the law that'll take care of the situation because cemeteries have a right of eminent domain and to condemn property, which I think happened in Fremont and you're aware of that, but there's nothing where somebody else can just because I plant my crops there for seven years it's reversed for me. What do you call that?

SENATOR CONNEALY: Accretion, it'd be...

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GREG EASLEY: Or if I take over the land and use it for so many years and I've maintained it and taken care of it, it's my land now type thing now you know. What do you call that?

AUDIENCE MEMBER: Possession is 99 percent of the law.

GREG EASLEY: Yeah. (Laughter) But there's nothing in the statutes to say that can happen, it just says, I mean, if I was running the association and a joint association, we've resurrected a number of associations where they've died, come to life, died, come to life over the years, and I've helped people do that. So to answer the trustee question, trustees are elected for one-, two-, three-year periods, so once, even if the cemetery's given to the trustee, those trustees die, they're gone. It doesn't go on to those trustees or their relatives, it's the cemetery association. How do you become a member of the cemetery association? You buy a lot on that ground and you got a vote. Get five people, you all vote, say we're going to do this, this and this, you get your association going again. This happened at Mount Hope in Douglas County in Omaha, Nebraska. That association was resurrected and they're doing very well

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today. But there's a lot of things, it takes dedicated people, and they don't want to do it, I don't blame them because the liability. And then we've got to get something in there on some small associations doing something that they are held liable from a cut on the fence or somebody breaking their leg and they're...Otherwise, nobody will serve on these things and you're going to have hundreds and hundreds and hundreds of abandoned cemeteries, and it's just going to be overwhelming. What constitutes a cemetery? The Mormon Road, every time somebody died along the Mormon Road, they buried somebody. Is that a cemetery? You go another 10 miles, they buried this one. And along the way there are little markers along the Mormon Road. I heard a speaker talk about that one time and are those cemeteries? Don't know. Sometimes they constitute a cemetery in a statute, I think it says if 100 people buried there. Well, cut out a few of the other ones what she was talking about where there's less than 100 people buried. I get about two to three phone calls a year from an attorney or a wealthy landowner that wants to start his own cemetery, and all I think of, Oh, my god, something the citizens of Nebraska are going to be responsible for this in another 50 years, and I

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refer them to the statute. And I've had about five calls where they want to put up a mausoleum. Well, they can point to the statutes here where you cannot put a mausoleum up unless it's within an existing cemetery that's been in existence for, I can't remember, three to five years. Well, so they said, Well, how do I start a cemetery? Well, they just got me. All he has to do is get Aunt Margaret, Uncle Harry and their son Butch, and they get their trustees together, set aside a little area size of this room, call it a cemetery, get their trustees elected and everyone follows the rules of the statute, put \$2,500 is a perpetual care fund, and you got yourself a cemetery in Nebraska. And he waits three years, he can go to granite, bronze, order up this quarter-of-a-million-dollar or million-dollar private granite mausoleum, just beautiful, and slap it down. Just comes in off a big flatbed and they slap it down. There's your mausoleum in your cemetery, bury 12 people in it and all the family members get buried there. After 25, 30 years, boom, county takes care of it. That's just not right. And if we're getting two to three people a year calling, attorneys calling me how to set up a cemetery, I mean just these little private things just like the old days

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on the old homesteads, it's going to be difficult. What I would suggest is this, and one is, on the perpetual care fund, that's under Statute 12-512.02, it says that in a monument cemetery, you know, it's 50-cents per square foot or 25 cents per square foot for a flat marker area in Memorial Park, that's basically nine dollars a grave, and I suggest moving that to 10 percent of the lot sale, which is fashioned after the mausoleum law which is also part of your statutes. It says, Put 10 percent in a perpetual care fund, which you cannot touch the principle, you can only get the interest out of it forever, and that, and they already do this in the state law for mausoleums and niches and columbariums, that's already existing in the statute, do the same thing. A lot of the big cemeteries put 20 to 25 percent into the perpetual care fund in the state of Nebraska. But a minimum of 10 should go in. And then to stop these people from just setting up a cemetery of which that's set up and done and that attorney said, Thanks very much for the information. I quoted him chapter and verse what he has to do because that's the law, and they're off starting some little cemetery none of us know about, and it's going to be a family cemetery, and all he needed to do

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was put \$2,500 in. My suggestion is somebody's going to start a cemetery because you've got roads access, you've got to plat this, you've got to care for it, take care of it. It is an expensive process and you don't want the citizens of Nebraska or the counties...and I feel sorry, some of these counties out west, what, might have 400 people in them? God save you trying to support some of these abandoned cemeteries out there. Douglas County alone has 43 cemeteries in it. I'd work real hard, I think I can find 15 of them, and I've been around that Douglas County, and I can't find the other 25. They're just little, about the size of this room, about half the size of this room, some of them. And so that's going to become a burden to somebody someday, and God knows about all the rest of them out there because every five to 10 miles out in some of these counties, there's a little cemetery, five to 10 miles. Because you don't go, in the old days when you had a buggy and a horse, you didn't go more than 10 miles. That was a half-day journey to go bury Uncle Fred. So they're all pretty close and they're all over the place. They're sitting out in fields. In fact, there's a couple golf courses, Senator Janssen...

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SENATOR JANSSEN: Quarry Oaks.

GREG EASLEY: Quarry Oaks.

SENATOR CONNEALY: North Bend.

GREG EASLEY: Right in the middle of Quarry Oaks you'll see a little area, about from that wall to here, right?

SENATOR JANSSEN: Um-hum.

GREG EASLEY: Fenced off, it's a cemetery right in the middle of a golf course.

SENATOR JANSSEN: I think there's three or four graves in there.

GREG EASLEY: Yeah, and if you hit a good ball you can get a good bounce off one of the dedicated plaque, but...
(Laughter) These are all over the place, and so and they're out in the middle of nowhere, and the county's supposed to

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take care of this? The golf course set up and they maintained to take care of that for them.

SENATOR JANSSEN: Yes, they did. And they do a very fine job.

GREG EASLEY: They do a very good job. And I found some down in Kansas, same way. And they were grateful that the Golfing Association is taking care of that little piece of land, took it off the county. But to stop people from doing this and because of the tremendous amount of money that's set up, first of all it said in the statute written about 1941, it said after 1941 you cannot set up a private cemetery in the state of Nebraska. You can't set up a private cemetery. That stopped some of the problem. But they could still be lot owners associations, municipalities, districts, and that's like those districts are going to be the county, municipalities are going to be the cities, and then the lot owners associations or fraternal organizations or religious ones, they could pop up anywhere. But after that, if they're going to put up this sort of thing, they need to put up a fund so in today's monies, you know, let me

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put it this way. There are cemeteries in Nebraska with perpetual care funds of over \$7 million, okay, \$7 million, \$5 million and that alone...and thank god they do have these things in some of the major ones. That still isn't enough to take care of the maintenance of those cemeteries once you hit the fence. Who's going to plow the roads, cut the grass, take care of it, but we're not going to be a problem to the city, the counties or the state. And by the time it hits the fence, they might be \$20 million. But we all started doing this long before there were perpetual care laws, but starting in 1910 we were doing these things. Forest Lawn was doing it back in the 1800s, they were setting money aside. Wyuka's a state funded cemetery, but they have a perpetual care fund. They're taking their responsibility seriously. Well, if anybody wants to start a cemetery in Nebraska, if you've got the money to go off and do this and you want to take care of this, put \$300,000 into the fund, perpetual care fund. Because there are plenty of cemeteries in the state of Nebraska already. They can resurrect all kinds of cemeteries. They can go to the Rose Lawns, the Rose Woods, all these and use those cemeteries. They don't need to be starting another little one the size

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of this room. But if they've got the money to do it, fine, put \$300,000, and some of these guys got the money probably, but put it in there then, fine, put \$300,000 in perpetual care fund, start your association and then put it in there so that when it does go belly-up, and it will because it's just a little family thing, there's going to be money in the perpetual care fund and we'd have to set it up who's going to oversee that, the county, the state or whoever or an abandoned cemetery association group in this state, is going to be able to take care of that to stop some of these two to three people I get a call a year on wanting to do this sort of thing. Otherwise, just go to the cemetery that is already there. They're all over the place. You don't need to go to another one, plus that, when I first came in 1973 the cremation rate in the state of Nebraska was like one-and-a-half percent. Statewide it's 17 percent now. That's a lot for a lot of rural areas. In Omaha it's 30 percent; 30 percent of the burials we make are cremation. And so with that going on, they're going to need less and less cemeteries as it goes anyway. But I suggest that if somebody's got this ego that they want to start up a cemetery, ante up the money and do it so it doesn't become

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the responsibility of the citizens of the state of Nebraska or whatever. Because right now \$2,500, most of these guys can write that out their checking account right now and boom, you got yourself a cemetery, and a liability of the county in the future. I'd like to talk to you more about that, but I'll get going on that, and I don't want to repeat a lot of the other stuff that we've talked about already. There was one other...and I do reiterate that we can get control and show that all cemeteries are supposed to be inviolate and the cannot be taken over by other people just because people forgot and just because they're no longer an association there. Most of the cemeteries, if you look back in the old platting of a county, you'll see them, they're pretty well designated, they say "cemetery." When they did this back in the 1900 and 1910, god save you if there was a fire down at the courthouse, I don't know what you'd do then, but and that's happened, that has happened. so these people can say, Here is our lot. And when there's a title search done, that belongs to the cemetery. And if that farmer or anybody else has infringed upon that property, I'm sorry, you got to back off, or buy that land, and make them buy it at today's rate, I don't know, but they've got to

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purchase that land because it has in here than any association, and that also goes for the counties and anybody else, can sell off their land. And that money is to be put in a fund as the court sees fit to be put in for the existing people that are already buried there or it can be put in a perpetual care fund or whatever, but the court would decide where that money would go for the welfare of the cemetery, and that's in the statutes already. I would also suggest that, you know, they talk about different things about how to put, what's an abandoned cemetery. And my thoughts on abandoned cemeteries because we can get caught in that Catch 22. Is it being maintained or is it active by burial and sale? Is it selling lots to consumers or is it making burials or has it long been left alone and is it being maintained? And some of these places they might say, okay right now it's pretty ambiguous, and it says that abandoned might be that it isn't being maintained or taken care of. Well, jiminy Christmas, if the Boy Scouts go out there and an Eagle Scout group goes and cleans the place up, boom, maintained. Start the clock another 20 years, you know what I mean. And so they basically, like the one lady mentioned, they basically leave it alone for 20 years and

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let everything grow and go to hell and everything else, and then after 20 years they can definitely say, Boom, it's abandoned. I have always said if there has been no sale, no transfer of deeds, no authorization for burial or no burials for 50 years, that's abandoned. I don't care who's taking care of it. It's abandoned. Because the people who are generally taking care of it are just concerned citizens. Because they're not getting buried there, they're going to the other cemeteries. But if they're making burials in that cemetery, it's not abandoned, it's not abandoned. So 50 years, you're just going back to 1955. Well, a lot of these cemeteries we're talking about, the ones I've seen, they haven't had any burials in them in 80, 100 years. And so 50 years without a burial or a sale. Now god help us if they, maybe they better put something in the deal, but if some guy from New York says, Oh, I want to go back to my roots and get buried back in Nebraska, and go out to Albion, Nebraska, and get buried in that pioneer cemetery because grandpa had 12 graves, well, if he goes in to a burial, that's not abandoned anymore because he's the one that come all the way out to get buried in it. Now that's a problem, and you are going to have to say, Hey, no, we don't bury in

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abandoned cemeteries anymore because now it got abandoned. We haven't had anything go on for 50 years, no burials anyway. But there might have been a lot of concerned citizens in that time frame who are out there just trying to do a civic duty to make the place look beautiful because it's a pioneer cemetery. Now most pioneer cemeteries when you cross from Iowa to Nebraska, most of them are on the eastern end because that's where if a pioneer died, they died there, and the further west you go, those are even more invaluable. There's a lot of valuable ones out there, and they're worth saving and taking care of but I wouldn't let any more in because that's just more liability you're taking on. Counties taking care of it, that's for them to talk about. Right now it says, two weeks before Memorial Day, if they take care of it. Not to expend more than \$350. Of course, that statute was probably put in about 1923, and that was a hell of a lot of money, you could do a lot of work for \$350. And they can't maintain the cemetery. We mow and most of the major cemeteries mow five-and-a-half days a week. We just mow, mow, mow, mow, mow, mow, mow. The only day off you get is Sunday and a half of a Saturday. Monday you start all over again, you mow, mow, mow, mow.

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Well, they can't do that. And they don't have the money to do that, so it might be before Memorial Day and it might be one other time, and it's basically to keep the saplings from growing up so they don't get ahold, and you can't chop down a tree. I've been in a lot of abandoned cemeteries in Colorado, Kansas and other places, and you'll come across them, and you couldn't get a gator sic) or I mean one of those little work buggies, I don't know what you want to call them, but they're Toro Masters and things like this. You couldn't get them through the cemeteries with all the volunteer evergreens that grow up and things like that. The only way they can get in there is with a weedeater. but they don't cut down the trees. They just let it grow, and it's abandoned and that's what it is, and the stones are sticking here and there and everything like this. And they all send a weedeater through there, forget the grass, it's just rocks and brush growing there, and that is a pioneer cemetery in Colorado, and I've been through a number of those. But they just let grow what grows there, and if it gets too big to mow, they just let it keep on growing type thing. I don't envy the counties that try to maintain some of these things because there are going to be hundreds and

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hundreds and hundreds of them out there. I'd like to work with you more on that and please take my name. I'm at West Lawn Cemetery. Any questions?

SENATOR JANSSEN: Questions? Thank you for being with us.

GREG EASLEY: Yeah.

SENATOR JANSSEN: Anyone else to testify? Seeing no one else, would you like to close? Okay, I thank you very much for being here today. I think we all learned a lot about abandoned cemeteries, and especially those who have driven quite a distance to be here. Appreciate it very much. And that ends the hearing for today.